IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

MACON COUNTY INVESTMENTS, INC.; REACH ONE; TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

INTERVENORS' MOTION TO DISMISS

COME NOW, the Tuskegee Macon County YMCA, the Little Texas Volunteer Fire Department, Inc., the Macon County Healthcare Authority, the Macon County RSVP Council, Inc., Macon Russell Community Action Agency, Inc. and the City of Tuskegee, Alabama, (hereinafter "Licensed Charities"), and respectfully move this Court to dismiss Plaintiffs' First Amended Complaint for Injunctive Relief and Declaratory Judgment ("First Amended Complaint") in its entirety for failure to state a claim upon which relief can be granted pursuant to *Fed. R. Civ. P.* 12(b)(6) and for lack of subject matter jurisdiction. In addition, the Licensed Charities move to dismiss all claims allegedly asserted by Plaintiff Macon County Investments, Inc. ("MCI") for lack of standing. In support of this motion, the Licensed Charities state the following:

1. Plaintiffs Reach One, Teach One ("Reach One") and MCI filed their Complaint on March 9, 2005.

EXHIBIT "A"

2. In their original Complaint, Plaintiffs sought injunctive and declaratory relief against Sheriff David Warren. Specifically, Plaintiffs alleged that certain amendments to the Rules and Regulations for the Conduct and Licensing of Bingo Games in Macon County, Alabama ("Macon County Bingo Rules") promulgated by Sheriff Warren violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. (Comp. at ¶ 1, 19.)

3. On April 3, 2006, Sheriff Warren filed a Motion to Dismiss and Brief in Support of Motion to Dismiss with this Court.

4. This Court issued an Order on June 26, 2006, denying Sheriff Warren's Motion to Dismiss as to Reach One's claim but finding that MCI lacked standing to assert its claim. This Court gave the Plaintiffs leave to amend the Complaint in order for MCI to establish standing in the case.

5. Thereafter, on June 28, 2006, Plaintiffs filed their First Amended Complaint to allege that both Reach One and MCI jointly filed an application with Sheriff Warren for a Class B bingo license.

6. Plaintiffs restated their original Complaint and added a new allegation that Reach One and MCI had jointly filed the application for a Class B bingo license. Even with this new allegation, Plaintiffs' Complaint is due to be dismissed in its entirety on several grounds and, more particularly, is due to be dismissed as to Plaintiff MCI for lack of standing.

7. First, Plaintiffs' Complaint is due to be dismissed pursuant to *Fed. R. Civ. P.* 12(b)(6) because it fails to state a claim for violation of the Equal Protection Clause of the Fourteenth Amendment upon which relief can be granted.

8. Plaintiffs do not challenge the Macon County Bingo Rules as originally promulgated. They do, however, challenge the First Amended Rules and the Second Amended Rules as violating the Equal Protection Clause. Plaintiffs' Complaint fails to demonstrate that the First Amended Rules and Second Amended Rules are not rationally related to a legitimate government interest and Plaintiffs fail to demonstrate that Sheriff Warren's actions were triggered by a discriminatory motive or purpose. *Snowden v. Hughes*, 321 U.S. 1, 8 (1944); *Kuhn,* 304 F.Supp, 2d at 1332; *Arrington v. Dickerson*, 915 F.Supp. 1503, 1509 (M.D. Ala. 1995). Therefore, the First Amended Complaint fails to state a claim upon which relief can be granted and it is due to be dismissed.

9. Second, Plaintiffs' Complaint is due to be dismissed for lack of subject matter jurisdiction because the Plaintiffs' claim is not yet ripe and the case is moot. *Digital Props, Inc. v. City of Plantation*, 121 F.3d 586 (11th Cir. 1997). *North Carolina v. Rice,* 404 U.S. 244, 246, 92 S.Ct. 402, 404, 30 L.Ed.2d 413 (1971); *see also Powell v. McCormack,* 395 U.S. 486, 496, 89 S.Ct. 1944, 1951, 23 L.Ed.2d 491 (1969). Sheriff Warren has neither granted nor denied Reach One's application for a Class B bingo license. Thus, no claim or controversy is presented and the case is not ripe for adjudication. Furthermore, Plaintiffs' claim is moot because even if this Court were to grant the Plaintiffs' complete relief (*i.e.* invalidating certain portions of the First Amended Rules and Second Amended Rules), Plaintiffs have not met the requirements necessary for the issuance of a Class B bingo license under the original version of the Macon County Bingo Rules.

10. Finally, Plaintiff MCI's claim is due to be dismissed from this action for lack of standing. In order for a plaintiff to have standing, and thus a justiciable case or

controversy, the plaintiff must satisfy three requirements: "(1) they have suffered an injury that is concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action; and (3) it is likely that the injury may be redressed by judicial action." *Florida Public Interest Research Group Citizen Lobby, Inc. v. EPA*, 386 F.3d 1070 (11th Cir. 2004). This Court cited *Florida Public Interest* in its Order dated June 26, 2006, for the proposition that at that the motion to dismiss stage "it may be sufficient to provide 'general factual allegations of injury resulting from the defendant's conduct'." *Florida Public Interest*, 386 F.3d at 1083. However, Plaintiff MCI fails to sufficiently allege an injury resulting from Sheriff Warren's conduct.

11. Amendment No. 744, and the Macon County Bingo Rules, only provide for the issuance of a Class B bingo license to nonprofit organizations. Contrary to the Plaintiffs' allegations in their First Amended Complaint, neither the Constitutional Amendment nor the Macon County Bingo Rules, as amended, contemplate a **joint** application for a Class B bingo license. Indeed, it is clear from the face of the application submitted by Plaintiff Reach One that it was **not joint**, but submitted only in the name of the nonprofit organization. (First Amended Comp. at Ex. 4.)

12. In an analogous case, the Eleventh Circuit affirmed the dismissal of a complaint which alleged that a city ordinance violated the Equal Protection Clause and found that the plaintiff, a for-profit commercial vendor, lacked standing to bring suit under an ordinance which only created rights in non-profit organizations. *Alkov v. City of Miami Beach*, No. 05-15696, 2006 WL 1428265, at *1 (11th Cir. May 24, 2006)(slip opinion). The Eleventh Circuit agreed with the district court's finding that the for-profit vendor did not fit

within the non-profit category described by the ordinance and the vendor did not offer any reason why he should be able to raise the rights of others. *Id.* Finally, the Eleventh Circuit agreed "with the district court that [the vendor] still would lack standing even if the ordinance applied to commercial vendors, because the only applications whose rejection he contests were submitted on behalf of non-profit organizations." *Id.* Amendment No. 744 only creates rights in nonprofit organizations and MCI is admittedly a for-profit entity. The only application challenged by MCI is one that was submitted by and in the name of Plaintiff Reach One. Consequently, Plaintiff MCI lacks standing to pursue this action and is due to be dismissed.

WHEREFORE, above premises considered, the Licensed Charities move this Honorable Court to dismiss Plaintiffs' Complaint in its entirety.

Respectfully submitted,

s/John M. Bolton, III
s/Charlanna W. Spencer

Attorneys for Proposed Intervenor/Defendants,
Tuskegee Macon County YMCA,
Little Texas Volunteer Fire Department, Inc.,
Macon County Healthcare Authority,
Macon County RSVP Council, Inc.,
Macon Russell Community Action Agency, Inc.,
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CERTIFICATE OF SERVICE

I hereby certify that on ______________, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kenneth L. Thomas, Esq.
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Gary A. Grasso, Esq.
Adam R. Bowers, Esq.
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And I certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

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